

The Practitioner Entertainment Law

Performer Protection

Court Clarifies Issues Under the Talent Agencies Act

By Jeffrey Huron

In *Styne v. Stevens* (2001) 26 Cal.4th 42 (Styne), the California Supreme Court held that the one year statute of limitations set forth in § 1700.44, subdivision (c), of the Talent Agencies Act [i.e., Sections 1700 to 1700.47 of the Labor Code (the "Act")] applies to claims for affirmative relief and thus does not time bar defenses based on violations of the Act. The Supreme Court further held that § 1700.44, subdivision (a), of the Act gives the Labor Commissioner exclusive jurisdiction over controversies arising under the Act. Therefore, a court may not consider a defense based on a violation of the Act until after it has been submitted to the Labor Commissioner for determination.

The Act regulates talent agencies, persons or corporations that procure professional employment or engagements for creative or performing artists. (§ 1700.4, subd. (a).) Artists include stage and screen actors; radio and musical artists; musical organizations; theater, movie and radio directors; writers; cinematographers; composers; lyricists; arrangers; models; "and other artists and persons rendering professional services in motion picture, theatrical, radio, television and other entertainment enterprises." (§ 1700.4, subd. (b).) The purpose of the Act is to protect artists seeking professional employment from unscrupulous and unqualified talent agencies by requiring the licensing of talent agencies. *Waisbren v. Peppercorn Productions, Inc.* (1995) 41 Cal.App.4th 246, 254.

The Act provides that "[n]o person shall engage in or carry on the occupation of a talent agency without first procuring a license . . . from the Labor Commissioner." (§ 1700.5.) An unlicensed person's contract with an artist to provide the services of a talent agency (i.e., procurement of employment or engagements) is illegal and void. *Waisbren*, supra, at 261. To protect artists from the abuses of talent agencies, even incidental or occasional efforts to secure services for an artist requires a license. *Park v. Deftones* (1999) 71 Cal.App.4th 1465, 1470. However, the "[Act] does not cover other services for which artists often contract, such as personal and career management (i.e., advice, direction, coordination, and oversight with respect to an artist's career or personal or financial affairs), nor does it govern assistance in an artist's business transactions other than professional employment." *Styne*, supra, 26 Cal.4th at 51.

The Labor Commissioner has the right to hear and determine cases of controversies arising under the Act

subject to an appeal to the superior court. (§ 1700.44, subd. (a), italics added.) The Act further provides that "[n]o action or proceeding shall be brought pursuant to [the Act] with respect to any violation which is alleged to have occurred more than one year prior to commencement of the action or proceeding..." (§ 1700.44, subd. (c), italics added.)

The California Supreme Court in *Styne*, supra, interpreted the Act consistently with its aim to protect artists. Plaintiff Norton Styne was Connie Stevens' long-time personal manager. Styne substantially contributed to Stevens' success in reaching a deal with the Home Shopping Network ("HSN"). Under this deal, Stevens acted as a spokesperson on HSN for her company's beauty products. Stevens'

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company sold her line of beauty products to HSN, which resold them to consumers. Pursuant to an oral management agreement in effect during this time, Styne was entitled to a 10% commission of all gross monies derived by Stevens.

In January 1996, Styne sued Stevens for payment pursuant to their oral contract.

Styne did not have a talent agency license, although Stevens did not plead a violation of the Act as a defense in her answer. However, in August 1997, Stevens sought summary judgment on the grounds that Styne acted as a talent agency without a license. She claimed that Styne's dealings with HSN were efforts to procure employment or engagements for which he needed a license.

Styne argued that Stevens's defense (1) was untimely because it was not brought within one year of the alleged violation; and (2) must be decided (if at all) by the Labor Commissioner. Styne also argued that he helped Stevens market her company's cosmetics products and did not procure services for her employment or engagement as an artist. But, significantly, Styne did not argue that Stevens waived any defense under the Act by failing to plead it as a defense in her answer.

The trial court denied Stevens's motion for summary judgment. The trial court found that Styne did not act as a talent agent because Stevens was not employed by HSN, and that the income derived from HSN was based on sales to the public and not through the employment

or engagement of Stevens.

During trial, the evidence suggested that Styne took efforts to promote Stevens' employment with HSN as a celebrity spokesperson, even though she was not paid for her appearances, but instead derived income from sales of her company's products to HSN. The trial court refused to instruct the jury to determine whether Styne violated the Act by procuring employment for Stevens without a license. The jury awarded Styne \$4.3 million, and Stevens moved for a new trial.

The trial court granted Stevens a new trial on the grounds that it erred in not instructing the jury regarding the license requirement for talent agencies. Styne appealed, and the court of appeal reversed the trial court. The appellate court held that any dispute arising under the Act must be first submitted to the Labor Commissioner and that Stevens' defense under the Act was waived because she failed to bring it within one year after the statute of limitations began to run. The court of appeal determined that for purposes of asserting the Act as a defense, the statute begins to run when the defendant is served with the summons and complaint.

The California Supreme Court disagreed with the appellate court's conclusion that Stevens' claim was time barred. First, the Supreme Court noted that the appellate court's decision contradicted existing legal precedent that defenses may be raised at any time. *Styne*, supra, 26 Cal.4th at 51-52. Statutes of limitation are shields to bar stale lawsuits. Their aim would be distorted if they could be used as swords to bar a legitimate defense to a timely lawsuit. *Id.*, at 52. Second, the Supreme Court gave deference to decisions of the Labor Commissioner, consistently holding that the Act's one year statute of limitations does not apply to defenses. *Id.*, at 52-53. Third, the Supreme Court held that even though the Act's statute of limitations does not except defenses, its terminology is similar to other statutes of limitation and thus there is no reason to make an exception to the rule that they do not apply to defenses. *Id.*, at 53.

However, because the issue was improperly presented, the Supreme Court declined to decide whether Stevens waived her defense under the Act by not pleading it in her answer and raising it only by her motion for summary judgment. *Id.*, at 54, fn.

Therefore, it may be possible for artists to waive Act based defenses by not timely and correctly pleading them.

The California Supreme Court rejected

Stevens' argument that Act based defenses do not have to be submitted first to the Labor Commissioner. *Id.*, at 58-59. Stevens argued that § 1700.44, subdivision (a), requires submission of "cases" to the Labor Commissioner. She contended that defenses do not give rise to "cases" and thus do not fall within the original jurisdiction of the Labor Commissioner.

In rejecting this argument, the Supreme Court observed that § 1700.44, subdivision (a), provides that "[i]n cases of controversy arising under [the Act], the parties involved shall refer the matters in dispute to the Labor Commissioner. . . ." (Italics added.) The Supreme Court found this language broad enough to encompass claims for affirmative relief, as well as defenses under the Act. *Id.*, at 56.

Stevens also argued for an interpretation of § 1700.44, subdivision (a), that would give courts concurrent jurisdiction with the Labor Commissioner over Act based defenses. She claimed that requiring artists to submit Act based defenses to court actions to the Labor Commissioner did not serve the Act's purpose – the protection of artists.

The Supreme Court again disagreed with Stevens. There is nothing to suggest that the purpose of the Act would be better served by requiring submission of an artist's claims for affirmative relief to the Labor Commissioner, but not an artist's defenses under the Act. *Id.*, at 58. The Supreme Court further held that interpreting the Act broadly in favor of the Commissioner promoted the doctrine of exhaustion of administrative remedies – "to reduce the burden on courts while benefiting from the expertise of an agency particularly familiar and experienced in the area." *Id.*

Therefore, the Supreme Court held that when a defendant in pending court action asserts a "colorable" Act based defense, the action must be stayed until the issue has been submitted for review to the Labor Commissioner. *Id.*, at 58-59. According to the Supreme Court, "colorable" means that "[i]f a dispute in which the Act is invoked plausibly pertains to the subject matter of the Act, the dispute should be submitted to the Commissioner for first resolution of both jurisdictional and merits issues, as appropriate." *Id.*, at 59, fn. 10.

The Supreme Court concluded that Stevens presented a colorable defense under the Act. Whether Styne's efforts in securing a deal for the sale of cosmetics by Stevens's company to HSN is covered by the Act "is precisely the sort of issue that the [Act] commits in the first instance to the exclusive jurisdiction and special competence of the Commissioner." *Id.*, at 61. Because Stevens' defense that her contract with Styne is covered by the Act was not submitted to the Labor Commissioner, the Supreme Court affirmed the trial court's decision to grant a new trial and stayed further court proceedings until the matter of Stevens' Act based defense is decided by the Labor Commissioner. *Id.*

The Supreme Court's decision in Styne is consistent with the Act's purpose to protect artists from abuses by talent agencies. Artists may assert the Act as a defense against court actions brought by persons who procured employment or engagements without a license regardless of the Act's one year statute of limitations. However, artists and their counsel should be careful to timely and properly plead the Act as defense to avoid possible waiver of the defense, an

issue that remains unsettled under the Act. So long as there is a colorable claim or defense under the Act, courts must submit it to the Labor Commissioner for resolution. The Supreme Court's decision in Styne gives artists a valuable "sword" against claims by unlicensed talent agencies.

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